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ABSTRACT

Mock trials help students gain a basic understanding of the legal mechanism through which society chooses to resolve many of its disputes. While learning the details of trial process and procedures, students also develop a number of critical skills that are universally necessary: (1) critical analysis of problems; (2) strategic thinking; (3) questioning skills; (4) listening skills; (5) skills in oral presentation and extemporaneous argument; and (6) skills in preparing and organizing material. Of particular interest is the high level of cooperation among students needed for successful mock trials. Participation in mock trials helps students to understand better the roles that the various actors play in the justice system and also the difficult conflicts those people must resolve daily in performing their jobs. Mock trials also provide a natural opportunity to incorporate field experiences and community resource people into the school curriculum. This handbook explains the types of mock trials and how to prepare for and conduct mock trials in the classroom. A lesson plan is provided for introducing dispute resolution and the trial process. Simplified rules of evidence are given as well as helpful hints for mock trial participants. A sample judging form is included with guidelines for selecting judges for the mock trial. Scenarios of several mock trials suitable for use with students in grades 5 through 12 are also included. Four sources of further information are noted. (JB)

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Putting on Mock Trials

EDITED BY RICHARD L. ROE

SO 020 370

American Bar Association
Special Committee on Youth Education for Citizenship

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This is the fourth of a series of handbooks on bar/school partnerships produced by the American Bar Association's Special Committee on Youth Education for Citizenship, 750 N. Lake Shore Drive, Chicago, IL 60611, 312/988-5725.

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Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the American Bar Association or the Department of Education.

Across the country, exercises are going on that look like trials, that deal with real facts and common situations, that feature judges, lawyers, witnesses, and jurors. Everything is as realistic as possible—except that the participants are youngsters who are learning about law and the legal system through a simulation known as the mock trial.

Why is it that the trial—something which for years was considered solely the province of the legal profession—is suddenly becoming a popularly accepted educational experience for nonlawyers?

Part of the mock trial's appeal lies in the fun involved in preparing for and participating in the simulated trial. Who doesn't want to become—if only for a brief time—a Perry Mason or a distinguished judge or the aggrieved plaintiff demanding justice? While television depiction of trials often distorts the reality of legal procedures, the courtroom drama which comes into our living rooms several times each week surely heightens the mock trial experience for students.

Objectives of Mock Trials

What educational objectives can a mock trial achieve? Through participation in mock trials and analysis of the activity, students gain an insider's perspective on courtroom procedures. Mock trials help students gain a basic understanding of the legal mechanism through which society chooses to resolve many of its disputes. While learning the details of trial process and procedures, students are also developing a number of critical skills that are universally necessary: critical analysis of problems; strategic thinking; questioning skills; listening skills; skills in oral presentation and extemporaneous argument; and skills in preparing and organizing material. Of particular interest is the high level of cooperation among students needed for successful mock trials. Recent research findings indicate that such cooperative learning activities encourage significant cognitive achievement among students from a variety of backgrounds and also improve students' attitudes toward school and each other.

Participation in mock trials helps students to understand better the roles that the various actors play in the justice system and also the difficult conflicts those persons must resolve daily in performing their jobs. On a more complex level, mock trials also provide students with an excellent vehicle for the study of such fundamental law-related concepts as authority and fairness.

Mock trials also provide a natural opportunity to incorporate field experiences and community resource persons into the school curriculum. Trips to the local courts to observe real attorneys, witnesses and judges in action are a natural prelude to, or follow-up activity for, the mock trial. In addition, mock trials are a great way for attorneys, law students and judges to contrib-

ute to programs. Community resources who come into classrooms to help students prepare, act as judges or debrief the trial are performing a valuable service which will easily lead to further cooperation with the schools. This interaction with actual people in the legal system can go a long way toward changing negative attitudes of some students toward "unknown" professions. In addition, these resource people will often develop more positive attitudes toward students from their experience with mock trials.

Finally, the mock trial experience can serve to prepare students for possible future involvement as parties, witnesses, or jurors in trials. Their participation can reduce fear and help provide the knowledge needed to perform these roles more effectively.

Types of Mock Trials

The mock trial begins where actual trials begin—with a conflict or dispute which the parties have been unable to resolve on their own. Mock trials may draw upon historical events, trials of contemporary interest, school and/or classroom situations, or hypothetical fact patterns. Most mock trials use some general rules of evidence and procedure, an explanation of the basic facts, and brief statements for each witness. Other mock trial formats range from free-wheeling activities where rules are created by the student participants (sometimes on the spot) and no scripts are used, to serious attempts to simulate the trial process based on simplified rules

Mock Trials and Critical Thinking

Mock trials are dramatic and compelling introductions to law and to the legal system. With some modifications they can also be an exciting way to strengthen critical thinking skills and to ensure widespread classroom participation. We thought you might be interested in the following examples:

Multiple juries. Divide all those who are not participating as attorneys or witnesses into several juries that deliberate independently to decide the outcome of the case. The juries then compare their decisions and briefly describe *the reasoning behind them.* This technique can also be used in a moot court appellate hearing where the case can be argued before several panels of justices. Each panel can deliberate, reach its decision in the case, and present its reasoning as the panels compare their decisions.

A variation of this approach was used for several years in Los Angeles as part of a teacher-training program. One of the last sessions of an in-service course was a mock trial held in the county courthouse on a Saturday morning. The teachers were invited to bring as many class members and their parents, from grades 4 through 12, as they wished, to take part in the trial. As participants came in, they were divided into juries of twelve, based on age. There were elementary, junior high school, high school, and adult juries. Volunteer attorneys and judges and in-service staff enacted all the roles in the mock trial. (Students in mock trial competitions could also serve as the mock trial presenter.) One year, over twenty juries listened to the case. Then each jury retired to a separate room with a volunteer attorney serving as resource person, and decided upon a verdict. Each jury returned to the large courtroom, read its verdict, and gave a short description of the reasoning behind it. A scorekeeper tallied up the responses. The judge then discussed the verdicts and gave his or her opinion in the case. The four-hour activity was always the highlight of the in-service program for teachers, students and parents alike.

Using a procedure for making decisions. Whatever form of mock trial is used, whether single or multiple jury, the critical thinking that goes into the decision is enhanced by the use of procedures (we call them "intellectual tools") for examining the issues raised in the case. For example, if the issue before the jury is who should be held responsible for a particular wrong or injury, it is helpful to have the members of the jury think about what would be a fair response to a wrong or injury and whether procedures used to make this decision were fair.

Using these sets of "intellectual tools" helps students come to a conclusion about what should be done. But it also asks them to consider whether their verdict is consistent with democratic principles and ideals. It illustrates how complicated some of these issues are, moving the decision-makers away from simplistic solutions.

Mock trial to moot court. Appealing the decision arrived at in a mock trial to an "appellate court" allows students to argue whether or not the law, the procedures, or the decisions meet the test of constitutionality. This approach can involve new students in the roles of justices, of appellate and respondent attorneys, and of law clerks who help do research. The appeals process also allows participants not only to be concerned with court procedure and what the law states, but also to think about what the law "should be."

Source: Adapted from an article by Alita Letwin in the Center Correspondent, *published by the Center for Civic Education.*

of evidence and procedure, to dramatic reenactments of historical trials in which scripts are heavily relied upon.

The format chosen depends, of course, upon the objective which the resource person and teacher have established for the activity. But regardless of how mock trials are used, teachers often feel that training would help them feel more comfortable with this strategy in the classroom. This training is another great opportunity for resource people. They've often used it in law-related teacher training programs which included mock trials in their courses. Training sessions provided by these programs explore the rationale for using mock trials in the classroom, explain simplified rules of evidence and procedure, and offer teachers an opportunity to prepare for and "walk-through" a mock trial under the supervision of group leaders and attorneys.

Training and community resources are a big help, but they're not essential. Lawyers and teachers can still conduct mock trials by following the basic steps we've outlined here and by doing further reading or becoming familiar with some of the commercially-prepared materials on the market.

How to Prepare for and Conduct Mock Trials in the Classroom

After teaching about the purpose of trials and the procedure involved, we suggest the following:

a) Distribute mock trial materials to the students. The facts and basic law involved should be discussed with the entire class. Teachers may develop fact patterns and witness statements (e.g., brief summaries of each witness' testimony), have students develop them, or use already published trial materials.

b) Try to match the trial to the skills and sophistication of your students. For example, if your students are unfamiliar with mock trials, you probably should begin with a simple exercise. Remember that the aim of mock trials isn't always to imitate reality, but rather to create a learning experience for students. Just as those learning piano begin with simple exercises, so those learning mock trials can begin simply and work up to cases which more closely approach the drama and substantive dimensions of the real thing.

c) Students should be selected to play attorneys and witnesses, and then groups formed to assist each witness and attorney prepare for trial. For example, a trial could easily involve the entire class. The tasks for the prosecution team, in order of presentation at the trial are: opening statement, direct examination of each prosecution witness, cross-examination of each defense witness and the closing statement. Tasks for the defense team are: opening statement, cross-examination of each prosecution witness, direct examination of each defense witness, and the closing statement. In addition, four students are needed as witnesses and twelve students can serve as the jury. Such a division of tasks directly involves approximately two dozen students, and others can be used as bailiff, court reporter, judge, and as possible replacements for participants, especially witnesses, in the event of an unexpected absence. Still other students may serve as radio, television or newspaper reporters who observe the trial and then "file" their reports by making a presentation to the class in the form of an article or editorial following the trial.

d) Students work in the above mentioned task-groups in class for one or more class periods, with the assistance of the teacher and an attorney or law student. During

How a Mock Trial Competition Turned a Class Around

The following letter from a teacher in Lawton, Oklahoma, describes her experiences with a statewide mock trial competition. That competition was sponsored by the Oklahoma Law Citizenship Education Project. Similar learning takes place in regular classroom mock trials.

To Those Who Made the Mock Trial Competition Possible:

Last year was my first experience with the mock trial competition. I found it challenging and exciting. Our team was hand picked from a list of gifted and talented students. The reasoning was that the advanced students were the ones who would most benefit from the experience. They did well and I was very proud of them.

This year I made a decision which I thought I might regret. The decision was to take a beginning speech and debate class, sight unseen, and create this year's team. When this group showed in my room, the future didn't look too rosy. You name a problem area in school and it was represented. At best, there were a few who would be classified as high "average" students. Mingling with them were students with known drug, truancy and other various delinquency problems. I didn't know whether to throw in the towel or cry in it. It was not a question of, "Would they win?", rather it was, "Would they even begin?".

Well, they were in the state finals, winner's bracket! Something must have happened, right? RIGHT!

It was a slow beginning. There was very little self-confidence. Most didn't consider themselves to be bright or smart enough to learn, much less perform all this "law stuff." But they didn't fight it, they gave me and themselves a chance. Things began to happen. We had an advising attorney, Art Mata, who worked with them and said, "You can do this." Two judges gave their time working with them, encouraging them. No one was allowed to believe they were "dumb." Even those classified as "non-readers" (because their skills were so poor) were grasping ideas, memorizing and coaching the others. For some rea-

this preparation time, jurors might explore the role of the jury, the historical development of the jury system, and other topics related to their part in the mock trial. Student attorneys should use this time to outline the opening statements they will make. Because these statements focus the attention of the jury on the evidence which will be presented, it will be important for these students to work in close cooperation with all attorneys and witnesses for their side.

Student attorneys should develop questions to ask their own witnesses and rehearse their direct examination with these witnesses.

While some attorney-witness groups are constructing the questions and testimony for direct examination, other attorneys should be practicing how they will cross-examine the witnesses for the other side.

The closing arguments are rather challenging since they must be flexible presentations, reviewing not only the evidence presented for one's side but also underscoring weaknesses and inconsistencies in the other side's case which arise out of the trial proceedings.

By the way, don't be alarmed if your students aren't very proficient at first. Students will develop questioning and oral advocacy skills through repeated use of the exercise.

son this competition opened a door that they had never ventured to open before. Most of them never considered themselves to be intelligent or successful. This was a new concept of themselves and they didn't know what to think.

But the story of one particular student seems important to tell. It was a young senior girl. She was widely known by the school officials, but for all the wrong reasons. My first personal conversation with her took place in the school's mop closet where she had taken refuge from her mother, who had called the police to the school to scare her into moving back home. She was a petite, beautiful girl. But she was also a runaway, a truant, a discipline problem, a "doper" and no stranger to local juvenile authorities. She was enrolled in my speech class but was generally absent or in detention hall. I had heard her speak a few times in class and knew there was a wonderful mind being wasted. When we began working on the mock trial, I decided to take a gamble. I asked her to be a lawyer in charge of cross-examination. She agreed to try. Her first attempt was impressive and the other students encouraged her. Our advising lawyer and judges were impressed and urged her on. Her attendance improved. Even when she ended up in detention hall, you would find her working on her mock trial folder.

She made it through the first round of competition scared, but beautifully. She received high scores and was elated. Then the roof fell in. I was told by the counselors that because of her past record, there was no way she could graduate with her class, but they would not tell her till we were finished using her for the mock trial. They knew she would probably quit school.

After a lot of thought I decided she had the right to know. I didn't know how she would react when I told her. To my surprise, she was very calm. She had been expecting it and was going to go ahead and drop out of school. But before she checked out of school she shared her feelings. She said that the mock trial had been the most important thing that had happened to her. She had begun to believe she was worthless and could never amount to anything. But now, people who were meeting her for the first time were telling her she was bright, that she could do anything she set her mind to do. She cried and said, "I now know that I'm smart. I can think. I am worth something, I can be something." She assured me that it wouldn't stop here. She would go on and take her G.E.D. test and start college in the fall. I believe she will make it.

Some people might consider this a story about a failure. I can't believe that it is. This young lady discovered something about herself that had never quite been challenged before. For whatever reason the mock trial competition made it happen. She was not the only one. I was allowed to watch many others discover a strength and understanding in themselves that they had never known before. After the final competition, my student lawyer for cross-examination came up to me, and the conversation went something like this:

He: "Mrs. Dirickson, that man over there shook my hand and said I did a good job. He thinks I should go on to college, maybe in law."
Me: "...and?"
He: "He tells me that, and here I am almost failing English!"
Me: "...so?"
He: "I don't know. I never thought I was smart enough."
Me: "...well?"
He: "Maybe I was wrong!"

They lost in the final competition, but they do not consider themselves losers. They know they have possibilities they never thought existed. Now what do I do? They want another challenge! How do I come up with something to match the mock trial competition?

Please continue with this project. There are benefits that you never get a chance to see. I'm sure other teachers could tell you a story similar to ours, and probably have by now. Keep it tough, keep high standards, that's what makes this competition special.

Sincerely,
Mrs. Diane Dirickson
Drama Instructor
MacArthur Senior High School

e) Once all preparation has been completed, convert the classroom into a courtroom by rearranging desks into a courtroom.

f) Conduct the trial with a teacher, student or resource person (perhaps a law student, lawyer or actual judge) as a judge. A student jury may be used. Students should understand that the jury determines the facts in a case, primarily through their acceptance or rejection of the testimony offered by various witnesses for both sides. The judge deals with questions of law.

Don't interrupt the trial to point out errors. If a witness comes up with an off-the-wall comment, or if a student playing an attorney fails to raise an obvious objection, let it go. Wait until the debriefing, when you'll be able to put the whole exercise in perspective.

For educational purposes, it may be best to have the jury deliberate in front of the entire class, instead of retiring to a private place as occurs in actual trials. This will enable students to see first-hand the process of decision making, enabling them to learn what evidence was persuasive and why. Since the student jury may be representative of the community, their deliberations should provide a good analogy to real jury deliberations.

g) Set aside sufficient time for debriefing what happened in the trial. The debriefing is the most important part of the mock trial exercise. It should bring the experience into focus, relating the mock trial to the actors and processes of the American court system.

Students should review the issues of the trial, the strengths and shortcomings of each party's case, and the broader questions about our trial system. Does our judicial system assure a fair trial for the accused? Are some parts of the trial more important than others? Would you trust a jury of your peers to determine your guilt or innocence? Students should also explore their reactions to playing attorneys, witnesses, jurors, and the judge. What roles do each play in the trial process?

The debriefing is an excellent way to make the most of the resource person's experience and insights. Since the mock trial is a common frame of reference, the resource person has a natural vehicle for expressing ideas and observations, and students should be better able to grasp the points that are being discussed.

Source: Article by Lee Arbetman and Ed O'Brien, Update on Law-Related Education, *Winter, 1978. The section on objectives was adapted from the* Street Law Mock Trial Manual *of the National Institute on Citizen Education in the Law, which is published and distributed by Social Studies School Service, 10,000 Culver Blvd., Culver City, CA 90230.*

Introducing Dispute Resolution, Trial Process, and Steps in a Trial

This lesson plan will take one to two fifty-minute periods, or more if a trip to court is undertaken.

Objectives: As a result of the activities in this lesson, the students will be able to:

1. Explain the purpose of the trial process.
2. Describe at least one alternative to the trial process.
3. List and explain the major steps in the trial.
4. Name the parties to a case in both a civil and a criminal trial.
5. Explain the roles of attorneys, judge and jury in the trial process.

Activities

1. Reading Assignment: Either for homework or in class, the students should read background information on trial process (e.g., "Form and Substance of a Criminal Trial," on p. 10).
2. Vocabulary Exercise: Ask students to list at least five new words in "Form and Substance" section for vocabulary building. Alternatively, begin a class discussion by listing key words and phrases on the board (e.g., "adversary system," "plaintiff," "prosecution," "defendant," "evidence," etc.) and eliciting definitions from the class.
3. Small-Group Discussion Exercise: Divide the class into groups of 3-5. Ask them to develop at least two examples of noncriminal disputes that might wind up in a trial. Ask them to discuss alternative methods of dispute resolution for each case, and to identify when a trial might be the only solution. (20 min.)
4. Homework Assignment and Discussion Exercise: Ask students to bring in an article from a local newspaper concerning an incident that might result in a trial. In class, discuss why the disputes arose. Identify a possible way to settle the cases out of court. Ask the students: "If the parties go to court, what would they hope to accomplish?" (20 min.)
5. Steps in a Trial: Have students state the order of events in a trial and list them on the blackboard; alternatively, give large sheets of paper to small groups and ask them to develop their own list of trial procedures. After full class discussion, discuss ways in which the class's ideas about trial procedure match or vary from the actual procedure. Which is better? Why? (15 min.)

   Homework assignment: Direct students to make personal charts of the trial process. Ask students to clip articles about a trial currently in the news and to identify what particular steps in a trial are referred to in the articles.

   Quiz on trial process and steps in a trial.
6. Field Trip to Court (A half-day or one full day): Make arrangements through the clerk of the local court or an attorney for a visit by the class. Different courts handle student trips differently, but good communication with the staff at the local courthouse usually will ensure a worthwhile visit. You will need to find out what phase of a trial the students are likely to be observing, and whether it will be a civil or a crimi-

nal proceeding. (If your mock trial will be a civil case, you may prefer to observe a civil trial.)

If the clerk can give you specific information about the case or cases the class will be observing, spend some time in class the day before reviewing the characteristics of the civil or criminal process as appropriate.

As a homework assignment immediately after the field trip, direct the students to write several paragraphs answering these questions:

- What kind of trial was observed, and what portion?
- Who were the most important people in the courtroom, and what did they do?
- What facts did the class learn during their observation?
- What do you think happened after the class left?
- Did this process seem like a good way to deal with

Role Descriptions

Attorneys

Attorneys control the presentation of evidence at trial and argue the merits of their side of the case. They do not themselves supply information about the alleged criminal activity. Instead, they introduce evidence and question witnesses to bring out the full story.

Prosecutors present the case for the state against the defendant. By questioning witnesses, they try to convince the judge or jury that the defendants are guilty beyond a reasonable doubt. They suggest a motive for the crime and will try to refute any defense alibis.

Defense Attorneys present the case for the defendants. They offer their own witnesses to present their client's version of the facts. They may undermine the prosecution's case by showing that the prosecution witnesses cannot be depended upon, or that their testimony makes no sense or is seriously inconsistent.

Each student attorney will act in one of the following roles:

- conduct direct-examination
- conduct cross-examination
- do the necessary research and be prepared to act as a substitute for any of the other attorneys.

Any of the three attorneys may make opening and closing statements.

Witnesses

They supply the facts in the case. Witnesses may testify only to facts stated in or reasonably implied from the witness sheets or fact situation. Suppose that a witness's sheet states that he left the Ajax Store and walked to his car. On cross-examination he is asked whether he left the store through the Washington Street or California Avenue exit. Without any additional facts upon which to base his answer, he could reasonably name either exit in his reply, probably the one closest to his car. Practicing his testimony with the attorneys for his own team will help to uncover the gaps in the official materials that he will need to fill for himself.

Imagine, on the other hand, that a witness sheet included the statement that someone fired a shot through Mrs. Jones' closed curtains into her living room. If asked whether she saw the gunman, the witness would answer "no." She could not reasonably claim to have a periscope on the roof or to have glimpsed the person through a tear in the curtains. Neither response would be reasonable and both would add a very important fact which cannot be found in the case materials. If a witness is asked a question calling for an answer which cannot reasonably be implied from the material provided, she must reply, "I don't know" or "I can't remember." (Note: If prosecution witnesses wish to testify about the physical characteristics of the defendants, they should base their statements on the actual people playing the defendants on the day of trial. Witnesses, then, must have a chance to see each other before the trial begins.)

Court Clerk and Bailiff

Court clerks and bailiffs aid the judge in conducting the trial. In an actual trial, the court clerk calls the court to order and swears in the witnesses. The bailiff watches over the defendant to protect the security of the courtroom.

When the judge arrives in the courtroom, the clerk/bailiff should introduce himself/herself and explain that he/she will assist as court clerk or bailiff. If the person playing the role is the only clerk/bailiff available for a courtroom, he/she will need to perform all of the duties listed below. If necessary, the person can ask someone else sitting in the courtroom to get the witnesses from the hallway when they are called to the stand.

Court Clerk

When the judge has announced that the trial shall begin, the clerk says: "All rise. Superior Court of the State of _____, County of _____, Department _____, the Honorable Judge _____ presiding, is now in session. Please be seated and come to order."

When the bailiff has brought a witness to testify, the clerk may swear in the witness as follows: "You do solemnly affirm that the testimony you may give in the case now pending before this court shall be the truth, the whole truth, and nothing but the truth."

Other Courtroom Roles

An actual criminal trial might involve the additional participants listed below. For classroom exercises, students may fill any of the roles of judge, jurors, marshall, court recorder, prosecution coordinator and defense coordinator. Reporters and spectators also attend some trials.

Source: Excerpted from mock trial materials prepared by the Constitutional Rights Foundation.

the particular problem involved? What alternatives would you recommend? (You may wish to design a form for students to fill in for this purpose.)

Discuss the field trip, based on the homework responses, in large or small groups during the next class.

7. Guest Speakers: Having one or more attorneys or a judge visit in class is a good alternative or addition to a field trip to court. In arranging for speakers, be sure that person is adequately briefed regarding (a) the grade level, age and prior legal knowledge of the class; (b) objectives for the speakers's visit; (c) particular subject areas the class desires to discuss; (d) details of any activity to be conducted while the speaker is present. The better you handle preparation with the guest speaker, the better that class period will turn out. (One class period)
8. Distribute Mock Trial Materials and Assign Reading: At this point, the mock trial case and related materials should be distributed and assigned for homework reading.

Source: Excerpted from the Street Law Mock Trial Manual, *published and distributed by Social Studies School Service, 10,000 Culver Blvd., Culver City, CA 90230.*

Simplified Rules of Evidence

In American trials, elaborate rules are used to regulate the admission of proof (i.e., oral or physical evidence). These rules are designed to ensure that both parties receive a fair hearing and to exclude any evidence deemed irrelevant, incompetent, untrustworthy, or unduly prejudicial. If it appears that a rule of evidence is being violated, an attorney may raise an objection to the judge. The judge then decides whether the rule has been violated and whether the evidence must be excluded from the record of the trial. In the absence of a properly made objection, however, the evidence will probably be allowed by the judge. The burden is on the attorneys to know the rules and to be able to use them to protect their client and to limit the actions of opposing counsel and their witnesses.

Formal rules of evidence are quite complicated and differ depending on the court where the trial occurs. For purposes of this mock trial competition, the rules of evidence have been modified and simplified as set forth below. Not all judges will interpret the rules of evidence or procedure the same way, and you must be prepared to point out the specific rule (quoting it, if necessary) and to argue persuasively for the interpretation and application of the rule you think proper. No matter which way the judge rules, accept his or her ruling with grace and courtesy.

The following rules can be used as is or modified as appropriate. For instance, a teacher might want to prepare a less formal trial using only Rules 201, 301 and 603.

1. Relevance

Rule 101: *Relevance of evidence.* Generally, only relevant testimony and evidence may be presented. This means that the only physical evidence and testimony allowed is that which tends to make a fact which is important to the case more or less probable than the fact would be without the evidence. However, if the relevant evidence is unfairly prejudicial, may confuse the issues, or is a waste of time, it may be excluded by the court. This may include testimony, pieces of evidence and demonstrations that have no direct bearing on the issues of the case, or have nothing to do with making the issues clearer.

Example: The defense asks a party on cross-examination in a divorce case, "Have you ever been in car wreck?" (This question is permitted only if such conduct is relevant to the case.)

2. Examination

Rule 201: *Direct examination of witnesses (attorneys call and question witnesses)—form of questions.* Witnesses may not be asked leading questions by the attorney who calls them. A leading question is one that suggests to the witness the answer desired by the examiner, and leading questions generally are phrased to evoke facts.

Example of a nonleading question: "Sergeant Jeans, please describe what the defendant looked like the morning of the arrest."

Example of a leading question: "Sergeant Jeans, isn't it true that the defendant was dead drunk?"

Rule 202: *Character.* For mock trial purposes, evidence about the character of a party may not be introduced

How a Resource Person Can Help

1. Select a mock trial case that raises issues relevant to the objectives of the concepts being studied.
2. Assist with the coordination and support activities necessary to implement a mock trial, specifically:
   - If desired, procure a sufficient number of attorneys and law students and a judge to serve as trial participants and/or resource persons.
   - Make arrangements to use actual courtrooms, if desired.
   - Invite non-class members to attend, if desired.
   - Assign roles of those involved in the trial and determine how to make jury assignments.
3. Make certain that students are familiar with mock trial procedures and their roles.
4. Assist students in developing their roles or testimony when help is needed.
5. Oversee the presentation of the trial itself.
6. Conduct the debriefing session.

The resource person may wish to arrange the classroom in a fashion which suggests a courtroom.

Source: Reprinted with permission from the Leader's Handbook *of the Law in a Free Society project.*

unless the person's character is an issue in the case. For example, whether one spouse has been unfaithful to another is a relevant issue in a civil trial for divorce, but is not an issue in a criminal trial for larceny. Similarly, a person's violent temper may be relevant in a criminal trial for assault, but is not an issue in a civil trial for breach of contract.

Rule 203: *Refreshing recollection.* If a witness is unable to recall a statement made in the affidavit, the attorney may show the document to his/her witness to help the witness remember.

Example: A witness sees a purse snatching, offers to testify and gives a statement of events to the attorney. At trial the witness has trouble remembering events he or she saw. The attorney can help the witness remember by showing him or her the statement.

Rule 204: *Cross-examination of witnesses (questioning of the other side's witnesses)—form of questions.* An attorney may ask leading questions when cross-examining the opponent's witnesses.

Example of a leading question: "Sergeant Jeans, you really couldn't see the defendant very well when you pulled him over, isn't that right?"

Rule 205: *Scope of cross-examination.* Attorneys may ask questions that relate to any matters at issue in the trial (whether or not brought out by direct examination), or to matters relating to the credibility of the witness.

Example: In a car accident case where both liability and damages are in issue, the defense during cross-examination may ask questions about hospital bills, even if the direct examination did not cover this matter.

Rule 206: *Impeachment.* On cross-examination, the attorney may want to show the court that the witness should not be believed. This is called impeaching the witness. It may be done by asking questions about prior conduct that makes the witness' credibility (truth-telling ability) doubtful.

Impeachment may also be done by introducing the witness' affidavit, and asking the witness whether he or she has contradicted something which was stated in the affidavit.

Example (Prior Conduct): "Isn't it true that you cheated on your history exam last semester?"

Example (Past Conviction): "Isn't it true that you were convicted of armed robbery?"

Rule 207: *Redirect and Recross.* Redirect and recross examination are allowed by the judge's discretion. Recross examination must be limited to matters raised by redirect examination.

3. Exhibits

Rule 301: *Introduction of physical evidence.* There is a special procedure for introducing physical evidence during a trial. The physical evidence must be relevant to the case, and the attorney must be prepared to defend its use on that basis. Below are the basic steps to use when introducing a physical object or document into evidence in a court. (It is important to understand that a particular judge may like to have lawyers follow his/her own set of procedures.)

1. Tell the judge you intend to offer an item in evidence, and ask for it to be marked. Plaintiff's exhibits should be marked "Plaintiff's Exhibit No. 1," etc. In the same way, the defendant's exhibits should be marked "Defendant's Exhibit No. 1," etc.
2. Show exhibit to opposing counsel, who may make an objection to the offering at this time.
3. Show exhibit to witness. "Sergeant Jeans, do you recognize this document which is marked Plaintiff's Exhibit No. 1?" (The witness explains what it is—in this example, a letter—and his/her connection to it—in this example, the witness is its author). Remember that the objections to oral testimony—hearsay, irrelevancy, etc.—can also be valid against exhibits.
4. "Your Honor, I offer this letter for admission into evidence as "Plaintiff's Exhibit No. 1."
5. Get ruling from court on admission and proceed to use the letter. Questions must be asked in such a way as to bring the information into open court. For example, ask the witness, "Would you read paragraph three aloud?"

4. Hearsay

Rule 401: *Hearsay.* Any evidence of a statement made by someone outside of the courtroom which is offered to prove the truth of the matter asserted in that out-of-court statement is hearsay and is not permitted.

Example: Witness Winters testifies, "Some of the other tenants told me that Jones often failed to keep his apartments in good repair." This would not be admissible to prove that Jones often failed to keep his apartments in good repair (which was the matter asserted in the out-of-court statement). However, it might be admissible to prove that Winters had some warning that Jones did not keep his apartments in good repair (if that were an issue in the case), since it would not then be offered for the truth of the matter asserted.

Comment: Why should the complicated and confusing condition be added that the out-of-court statement is only hearsay when "offered for the truth of the matter asserted?" The answer is clear when we look to the primary reasons for the exclusion of hearsay, which are the absence in hearsay testimony of the normal safeguards of oath, confrontation, and cross-examination which test the credibility and accuracy of the out-of-court speaker.

For example, suppose Mrs. Jones testified in court, "My best friend, Mrs. Smith, told me that Bill was driving a car 80 miles per hour" and that out-of-court statement was offered to prove the truth of the matter asserted (that Bill was driving 80 miles an hour). We would be interested in the credibility of Mrs. Smith, her opportunity and capacity to observe, the accuracy of her reporting and tendency to lie or tell the truth. The lack of an oath, confrontation, and cross-examination would

make the admission into evidence of Mrs. Smith's assertion about Bill unfair to the opposing party.

If the statement were offered, however, to show that Mrs. Smith could speak English, then its value would hinge on Mrs. Jones' credibility (who is under oath, present and subject to cross-examination) rather than Mrs. Smith's, and it would not be hearsay.

Another example: While on the stand, the witness says "The salesman told me that the car had never been involved in an accident." This statement would not be

Form and Substance of a Criminal Trial

The Purpose of a Criminal Trial

All criminal offenses are precisely defined by law in the Penal Code. A trial tests whether the defendant has violated that code. After hearing the evidence for both sides, a neutral party decides whether to convict or acquit the defendant.

Charges against the defendant are brought by a prosecutor, who is usually a member of the district attorney's staff. In the name of the people of the state, the prosecutor seeks to uphold public order by seeking convictions against defendants whom the prosecutor thinks are guilty.

Opposite the prosecutor is the defense attorney. To prevent the conviction of an innocent person, the defense attorney presents the defendant's version of the alleged criminal activity. The defense attorney also performs the crucial function of guarding against infringements of constitutional rights or other errors in law and procedure.

Either the defendant or prosecutor may request a jury trial. Juries consist of from six to twelve "peers" of the defendant, all whom must agree in order to reach a verdict. A jury drawn from the community gives ordinary people a voice in deciding guilt and, in some cases, recommending an appropriate penalty. A jury acts as the trier of fact. The jurors must decide what the defendant really did and why he or she did it. If a jury trial is waived, the judge has the job of making these decisions by sorting fact from fiction.

Some trials also raise issues of law. Judges alone rule on the proper interpretation of the law. Issues of law include such questions as the admissibility of evidence and the meaning of a statute. Legal issues, rather than factual issues, usually form the basis for an appeal.

After a verdict in a case becomes final, the findings of fact and points of law are settled for the parties in the trial. A conviction stays on a person's record even though the person continues to claim innocence. An acquittal clears the defendant of the charges forever. The Double Jeopardy Clause of the Constitution prohibits trying a person twice on the same charges.

Elements of Criminal Offense

The Penal Code generally defines two parts for every crime, the physical part and the mental part. Most crimes specify some physical act, such as firing a gun in a crowded room, and a culpable mental state. Purposeful intent to commit a crime or reckless disregard for the consequences of one's actions are culpable mental states. Bad thoughts alone, though, are not enough. A crime requires the union of thought and action.

The mental state requirement prevents conviction of an insane person. Such a person cannot form a criminal intent and should receive psychological treatment rather than punishment. Defenses of justification also rest on lack of bad motives. A person breaking into a burning house to rescue a baby has not committed a burglary.

The Presumption of Innocence

Our criminal justice system is based on the premise that allowing a guilty person to go free is better than putting an innocent person behind bars. For this reason, the prosecution bears a heavy burden of proof. Defendants are presumed innocent. The prosecution must convince the judge or jury of guilt beyond a reasonable doubt.

Despite its use in every criminal trial, the term "reasonable doubt" is very hard to define. The concept of reasonable doubt lies somewhere between probability of guilt and a lingering possible doubt of guilt. Reasonable doubt exist unless the trier of fact can say that he or she has an abiding conviction, to a moral certainty, of the truth of the charge.

A defendant may be found guilty "beyond a reasonable doubt" even though a possible doubt remains in the mind of the judge or a juror. Conversely, triers of fact might return a verdict of not guilty while still believing that the defendant probably committed the crime.

Verdicts frequently hinge on contradictory evidence. Two witnesses might give different accounts of the same event. Sometimes a single witness will give a different account of the same event at different times. Such inconsistencies often result from human fallibility rather than intentional lying. Typically, jurors are instructed to apply their own best judgment in evaluating inconsistent testimony.

Evidence

The trier of fact must base a verdict solely on evidence produced at trial. Testimony of witnesses, physical objects, drawings and demonstrations can all be used as evidence. The rules of evidence determine which types of proof may be used in court. Rumors, hearsay and irrelevant statements are generally not admissible.

Court cases have held that evidence obtained illegally also must not be used in court. This exclusionary rule protects the constitutional rights of all Americans.

Source: Excerpted from Law Conference for High School Students, *published by the Center for Law-Related Education for the Sacramento Region.*

hearsay if offered to prove that the salesman made such a representation to the witness. (The statement is not offered to prove the truth of the matter asserted.) If offered to prove that the car had never been in an accident, it would not be allowed because it would be hearsay.

Objections: "Objection. Counsel's question is seeking a hearsay response."

"Objection. The witness' answer is based on hearsay. I ask that the statement be stricken from the record."

Response to Objection: "Your honor, the testimony is not offered to prove the truth of the matter asserted, but only to show. . ."

Rule 402. *Hearsay Exception—Admission Against Interest.* A judge may admit hearsay evidence if it was said by a party in the case and contains evidence which goes against that party's side.

Example: In a murder case the defendant told someone he committed the murder.

Rule 403. *Hearsay Exception—State of Mind.* A judge may admit hearsay evidence if a person's state of mind is an important part of the case and the hearsay consists of evidence of what someone said which described that particular person's state of mind.

Example: Witness Winters testifies "Jones told me, 'I hate Taylor.' " That would be admissible as showing Jones' state of mind.

5. Objections

Rule 501: *Objections.* An attorney can object any time the opposing attorneys have violated the rules of evidence. The attorney wishing to object should stand up and do so at the time of the violation. When an objection is made, the judge may ask the reason for it. Then the judge will turn to the attorney who asked the question, and that attorney usually will have a chance to explain why the objection should not be accepted ("sustained") by the judge. The judge will then decide whether a question or answer must be discarded, because it has violated a rule of evidence ("objection sustained"), or whether to allow the question or answer to remain on the trial record ("objection overruled").

6. Additional Evidence Rules

Rule 601: *Lack of Foundation.* A witness may not testify on any matter of which the witness has no personal knowledge. Nor may an exhibit be offered into evidence without the necessary facts showing its relevance and background being established.

Objection: "Objection. The witness has no personal knowledge that would enable him/her to answer this question."

Objection: "Objection. Counsel has not established facts showing by whom, why or when the exhibit was prepared."

Rule 602: *Repetition:* Questions designed to elicit the same testimony or evidence previously presented in its entirety are improper if merely offered as a repetition of the same testimony or evidence from the same or similar source.

Objection: "Objection. Counsel is asking for repetitive testimony—asked and answered."

Rule 603: *Opinion Testimony by Non-Experts.* Witnesses who are not testifying as experts may give opinions which are based on what they saw or heard and are helpful in explaining their story. However, other than matters that are commonly known (such as speed of a car or clumsiness of a person), witnesses should state only facts, not opinions as to ultimate issues.

Rule 604: *Ambiguous Questions:* An attorney shall not ask questions that are capable of being understood in two or more possible ways.

Objection: "Objection. The questions are ambiguous."

Rule 605: *Assuming Facts Not in Evidence.* An attorney shall not ask a question that assumes unproved facts.

Example of question which assumes facts: "When did you stop beating your wife?"

Objection: "Objection. The question assumes facts not in evidence."

Rule 606: *Argumentative Questions.* An attorney shall not ask a question which asks the witness to agree to a conclusion drawn by the questioner without eliciting testimony as to new facts. Provided, however, that the court in its discretion may allow limited use of argumentative question on cross-examination.

Objection: "Objection. Counsel is asking an argumentative question."

Rule 607: *Questions Calling for a Narrative Answer.* Questions shall be asked so as to call for a specific answer.

Example of a question calling for a narrative answer: "Tell us what you know about this case."

Objection: "Objection. Counsel is calling for a narrative answer."

Source: Excerpted from mock trial materials prepared by the Arizona Center for Law-Related Education.

Helpful Hints for Mock Trial Participants

Prior to conducting a mock trial in the classroom, the teacher or resource person may wish to reproduce the following "helpful hints" for students. The sheet may be handed out at the same time as the roles, facts, and documentation for the case being tried.

Opening Statement: Prosecution or Plaintiff

1. Purpose:
   To inform the jury of the nature and facts of the case. Argument, discussion of law, or objections by defense attorney or defendant are not permitted.
2. Include:
   - Name of the case.
   - Your name.

- Client's name.
- Opponent's name and counsel.
- A description or story of the facts and circumstances that led to the case.

A summary of the key facts each witness will bring out in testimony and the importance of any documents to be introduced.

- Conclusion and request for relief.

3. Avoid:
   - Too much detail. It may tire and confuse the jury.
   - Exaggeration and overstatement. Don't use such phrases as "prove it to a mathematical certainty" or "prove it absolutely beyond question."
   - Argument. It violates the function of the opening statement (which is to provide the facts of the case from your client's viewpoint), and you risk rebuke from the bench.
   - Anticipating what the defense attorney will say.
   - Walking or pacing. It distracts juries and irritates judges.

Opening Statement: Defense

1. Purpose:

   To deny that the prosecution or plaintiff has a valid case and, in a general way, to outline the facts from the standpoint of the defendant. Interruptions by prosecution or plaintiff are not permitted.

2. Give:
   - Your name and your client's name.
   - General theory of defense.
   - Facts that tend to weaken the plaintiff's case.
   - A rundown of what each defense witness will testify to.
   - Conclusion.
3. Avoid:
   - Repetition of facts that are not in dispute.
   - Exaggeration and argument.
   - Strong points of the plaintiff's case.
   - Walking or pacing. It distracts juries and irritates judges.

Direct Examination of Witnesses

1. Purpose:
   - To present the evidence necessary to warrant a verdict favorable to your client. All the elements of a law or criminal charge must be brought into evidence by witness testimony or documents.
   - To present the facts with clarity and understanding; to convince the jury of the soundness of your client's case.
   - To present your witnesses to the greatest advantage; to establish their credibility.
2. Refreshing memory:

   In the event that your witness' memory fails, you may refresh his or her memory by the use of the transcript.

3. General suggestions:
   - Ask "open-ended" questions. Those usually begin with "who," "what," "when," "where," or "how," or by asking the witness to "explain" or "describe."
   - Avoid complex or long-winded questions—questions should be clear and simple.
   - Be a "friendly guide" for the witnesses as they tell their stories. Let the witnesses be the stars.
   - Be prepared to gather information via questions and answers. Narratives, though very effective, may be open to objections.

Cross Examination

1. Purpose:
   - To secure admissions from opposing witnesses that will tend to prove your case.
   - To negate your opponent's case by discrediting his/her witnesses.
2. Scope:
   - Witnesses may be cross-examined regarding their direct testimony. Cross-examination is used to explain, modify, or discredit what a witness has previously stated.
3. Approach:
   - Use narrow, leading questions that suggest an answer to the witness. Ask questions that require "yes or no" answers.
   - Expose lack of sincerity.
   - Never ask "Why?" It gives a well-prepared witness a chance to explain.
   - Generally, don't ask questions unless you know what kind of answer you are going to obtain. Fishing trips may be expensive.
   - Be fair, courteous; avoid the "Isn't it a fact...?" type of questioning.
   - It may be useful *not* to insist on an answer.

Closing Argument

- Summarize the highlights of the testimony and documents as they support your case and undermine your opponent's case. Use actual examples from the trial that you have written down.
- Tie the facts to the law. Be persuasive.
- Confidently request the judge or jury to grant you the decision you want.

Source: Adapted with permission from the Mock Trial Manual *of the Law, Youth & Citizenship Program of the New York State Bar Association.*

Judges: Selecting, Preparing, Crossing Your Fingers

In spite of your best efforts emphasizing the long term educational value of mock trials, you may frequently find that judging leaves the most permanent impression on students and teachers.

Mock Trial Judging Form

Instructions:

This rating sheet is to be used to score mock trial teams. For each of the 14 standards listed below, indicate a score from the following scale.

1. poor
2. below average
3. average
4. good
5. superior

Scoring of the presentation should be independent of your decision on the merits of the case. In case of a tie, the team with the highest overall performance score will be declared the winner. Circle the winning team below.

Prosecution: _____.
(school name)

Defense: _____
(school name)

Standards

ATTORNEYS	Prosecution	Defense
THE OPENING STATEMENT Provides a clear and concise description of the anticipated presentation.		
ON DIRECT EXAMINATION, attorneys asked questions which brought out key information for their side of the case and kept the witnesses from discussing irrelevancies.		
ON CROSS EXAMINATION, attorneys exposed contradictions in testimony and weakened the other side's case without becoming antagonistic.		
IN QUESTIONING OF WITNESS, attorney properly phrased questions and demonstrated a clear understanding of trial procedures.		
IN CLOSING STATEMENT the attorney made an organized and well-reasoned presentation emphasizing the strengths of his or her side of the case and addressing the flaws exposed by the opposing attorneys.		

Standards

ATTORNEYS	Prosecution	Defense
UNDERSTANDING OF THE ISSUES AND LAW in the case was demonstrated by the attorneys.		
SPONTANIETY was demonstrated by attorneys in their ability to respond to witnesses and in the overall presentation of the case.		

Standards

WITNESSES	Prosecution	Defense
CHARACTERIZATIONS were believable and witness testimony was convincing.		
PREPARATION evident in the manner witnesses handled questions posed to them by the attorneys.		
FAVORABLE TESTIMONY for their side was given by witnesses based upon the record or what could be reasonably implied from the Fact Situation and Witness Sheets (deduct points for deviation and embellishment).		
SPONTANIETY was demonstrated by witnesses in their responses to questions.		

Standards

TEAM	Prosecution	Defense
COURTROOM DECORUM and courtesy were observed by team members and voices were clear and distinct.		
ALL TEAM MEMBERS were actively involved in the presentation of the case.		
TOTAL SCORE FOR TEAMS: (Maximum 70 Points)		

OVERALL TEAM PERFORMANCE

P ☐ D ☐

Fair	Good	Excellent	Superior
1 2 3 4 5	1 2 3 4 5	1 2 3 4 5	1 2 3 4 5

The effectiveness and fairness of the judges, as perceived by the participants, can often be the single most memorable factor in the entire experience.

Given this perhaps not-too-welcome conclusion, you might consider some of the following questions:

When Do You Need a "Real" Judge?

In the view of most participants, "real" judges add status and authenticity to mock trials, and particularly to competitions. If a goal is to provide positive recognition for young people, the presence of a judge will be a source of great pride to students, coaches, and parents.

The goal of broadening awareness of law-related education is also enhanced by the presence of a widely recognized judge. Melinda Smith, who has had the chief justice of the New Mexico Supreme Court presiding at her statewide finals, says that this event is her program's best public relations effort.

Judges, however, often have very limited time available and can be somewhat intimidating, particularly if students are unfamiliar with courtroom procedure.

Who Else Can Judge?

Many attorneys enjoy acting as judges and are most willing to volunteer their time to preside at the trial.

Other sources include law students, probation officers who have considerable court experience, teachers and students themselves.

To be fair to the students involved, all panelists, lawyers and nonlawyers alike, should have courtroom experience and a thorough knowledge of court procedures.

Selecting and Recruiting Effective Judges

Whichever route you go, you'll want good people. Dedicated, active supporters for law-related education programs seem to be the first target as recruits. However, mock trials are excellent hooks for attracting new converts to your goals and programs. Judges—whether real or role playing—who have volunteered in the past are often willing to personally contact new judges. Identifying and contacting potentially helpful members of the profession is a most useful function for a broad-based planning committee, which might include educators, bar association members and law students.

In selecting potential judges, as in all law-related education activities, try to use volunteers from various racial and ethnic groups, and to have both male and female judges. This diversity best represents a pluralistic society and will provide effective role models for young people.

Preparing Judges

As with other involvement of community resource people, paying attention to the details before the event is the best insurance for a good experience in mock trials.

After a personal visit or phone call, well in advance of the required date, judges should have the following information in writing: the goals of the mock trial; exactly what we want them to do; precise date, time, location and length of program; schools participating; case materials and any other pertinent information such as simplified rules of evidence or rating sheets.

Ask the judge to allow time for comments, especially praise for both teams if at all possible and an explanation of the decision. The judge should be encouraged to see his/her role as a teacher in this educational program.

A phone call to the judge the day before the mock trial confirms that all the details are in hand and enables the teacher to get a little sleep that night—maybe.

Keeping the Judge in Your Corner

Again, details can make all the difference in maintaining the support of volunteers. This could mean providing water or coffee, or a superb introduction. Ask ahead of time if it is all right to videotape or take photographs, or if the judge will need a robe.

The thank you letter could include comments from students about the mock trial. In short, a few thoughtful gestures could ensure a long term friend for law-related education and your school system.

A final comment about selecting judges might remind nervous teachers that students can learn that judges do indeed vary in attitudes, practices, decisions, and demeanor. Perhaps we all need to allow for and expect individual differences in students, teachers, parents—and even judges.

Source: Article by Beth E. Farnbach, in LRE Project Exchange, *Fall, 1982*

Questions for Class Discussion Following Mock Trials

Process and Experiences

1. Who is the most important person in the courtroom? Why?
2. Describe the role played by each of the participants in the trial.
3. It has been said that the "name of the game" is justice. Do you think that justice was achieved in this case?
4. Is there a better way of achieving justice?
5. If you were tried for a criminal (civil) offense, would you prefer a bench trial or a jury trial? Why or why not?
6. It has been said that trial by jury in a criminal case is inefficient, expensive, and time consuming. What do you think of this argument?

Criminal Case

1. With what crime was the defendant charged?
2. What legal questions or issues were raised by the case?
3. State the argument(s) of the defense.
4. State the argument(s) of the prosecution.
5. How did the prosecution try to prove its case?

6. Describe the strategy of the defense.
7. If you were an attorney for the prosecution or the defense, what facts or arguments would you have presented?
8. What was the decision? Do you agree or disagree with the decision? Why?
9. Are there grounds for appeal?
10. In your judgment, did the defendant get a fair trial? If not, why not?

Civil Case

1. What relief did the plaintiff seek? Could the parties have reached a mutual settlement out of court? Could any other branch of local, state, or federal government have settled this dispute?
2. What legal questions or issues were raised by the case?
3. State the argument(s) of the defendant.
4. How did the plaintiff try to prove his or her case? What was the plaintiff's strategy?
5. If you were an attorney for the plaintiff or defendant, what facts or arguments would you have presented?
6. What was the decision? Do you agree or disagree with the decision? Why?
7. In your judgment, did the plaintiff get a fair trial? If not, why not?

Source: Excerpted with permission from the Mock Trial Manual *of the Law, Youth & Citizenship Program of the New York State Bar Association and The New York State Department of Education.*

Analyzing Your Mock Trial

Opinion Analysis

1. What facts had to be proven beyond a reasonable doubt in order to find _____ guilty of _____?
2. Do you agree with the verdict of the judge/jury? Why? If not, why not?
3. In your opinion, what factors most influenced the court's decision and why?
   - Specific evidence/testimony
   - Credibility or lack of credibility of witnesses
   - Arguments by the prosecutor(s)
   - Arguments by the defense counsel(s)
   - Rulings by the judge
   - Charge to the jury
   - Other factors

Factual Analysis

- Name of the case: _____ vs. _____
- Statement of charge(s)
- Elements required to substantiate
- Statements of facts
- Prosecution's arguments
- Defense counsel's arguments
- Disputed issues/facts
- Court's decision
- Disposition
- Errors in rulings

Source: Excerpted from Courts & the Classroom *by Julie Van Camp (Concord, Massachusetts: Project LEAD, 1979).*

Elementary Mock Trial (Grades 5-6)

Here is the fact pattern for a mock trial that works well with elementary youngsters.

Facts: Tony and several of his friends were riding their bikes around the neighborhood on Friday, March 15, 1985. At about 6:00 p.m., a few kids from a different neighborhood rode by Tony and his friends and dared them to throw stones at Mr. Wiley's windows. Mr. Wiley is an old man who often tells the children to stay off his property. Several windows were broken, and when Mr. Wiley ran out of his house to stop the children, he recognized Tony. The state has now charged Tony with the crime of vandalism.

Issue: Did Tony throw the stones that broke Mr. Wiley's windows?

Witnesses: For the prosecution, Mr. Wiley and Leslie the paper carrier; for the defense, Tony and Sandy.

Witness Statements

MR. WILEY: I have lived in this neighborhood for 47 years. My wife and I built our little house when we were married. My wife died five years ago. Since then, I have been a victim of many attacks of vandalism. On Friday evening, March 15, 1985, I was watching the 6:00 p.m. news when I heard glass breaking in my front porch. I ran out my back door and around the house to see what was going on. I saw lots of kids. I recognized Tony because he lives down the block and often rides his bike past my house. It was clear to me that this group of kids was responsible for breaking my windows. In fact, Tony had a rock in his hand and was getting ready to throw it.

LESLIE, THE PAPER CARRIER: I have delivered newspapers in Mr. Wiley's neighborhood for three years. On Friday, March 15, 1985, I was delivering a newspaper to Ms. Crowley, who lives three houses away from Mr. Wiley, when I heard kids screaming and then I heard breaking glass. I ran over to Mr. Wiley's house. I saw about 10 children on the front yard. Tony and another kid were pushing each other. It looked to me like the other kid was trying to stop Tony from throwing a stone. I did not see anyone throw stones.

SANDY: Tony and I were out riding our bikes with some other friends on Friday, March 15, 1985. We were riding up and down Tony's block when a bunch of kids we didn't know rode up to us and started teasing us. They dared us to throw stones at grouchy old Mr. Wiley's windows. We tried to ignore them. They threw a stone and hit a front porch window. Then they threw some more stones. I think a couple of windows were broken. Tony

and I and our friends stood and watched. When one of the other kids picked up a stone to throw, Tony tried to stop him. Then Mr. Wiley came around the house. The other kids said they didn't throw the stones, they said that Tony did. I think they were mad at Tony because he tried to stop them. Tony is a real nice friend, he wouldn't try to break Mr. Wiley's windows.

TONY: I was riding my bike with my friends on Friday, March 15, 1985. It was almost getting dark when a bunch of kids we didn't know rode up to us and started bugging us. They wanted us to throw rocks with them. They were going to try to break some of Mr. Wiley's front porch windows. Even though I don't like Mr. Wiley very much, we said we wouldn't do that. I saw one kid standing next to me pick up a rock. I tried to take it out of his hand so he wouldn't throw it. That's when Mr. Wiley came around the corner. Leslie, the newspaper carrier, also showed up. I did not throw any stones.

Instructions

The prosecution must set out such a convincing case against the defendant that the jury believes "beyond a reasonable doubt" that the defendant is guilty.

Sub-issues

1. Was it too dark to see clearly?
2. Was Tony throwing stones or stopping someone else from throwing stones?
3. Was Mr. Wiley "out to get Tony" because he rides his bike around his house?
4. Did Tony dislike Mr. Wiley enough to break his windows; was there motive?
5. Which witness should be believed?

Concepts

1. Circumstantial evidence vs. direct proof.
2. Credibility of witness.
3. Burden of proof: beyond a reasonable doubt.

Law

Whoever intentionally causes damage to physical property of another without his or her consent is guilty of a misdemeanor and will be sentenced to imprisonment for not more than 90 days or payment of a fine of not more than $500 or both.

Source: Article by Jennifer Bloom in Update on Law-Related Education, *Winter, 1986.*

Mediation and the Adversary Process (Grades 5-8; 9-12)

Because law-related education focuses on the judicial system, and because mock trials are an appealing strategy, we often overlook nonadversarial methods of conflict resolution.

The following strategy is intended to contrast mediation with the more familiar adversarial process. It can be used with students in grades five through high school. The cases used can be changed according to the age and sophistication of students.

The Two Cases

Case 1 (Grades 5-8)
Plaintiff: Tony
Defendant: Jody

Jody was sick and couldn't go on her paper route, so she asked Tony to do it for her. She agreed to pay him $2. Tony delivered the papers, but didn't put plastic bags on them. It rained and the papers were ruined. Jody refused to pay Tony the $2.

Case 2 (Secondary)
Plaintiff: Cecil Jackson
Defendant: Sarah Miller

Sarah Miller moved into a house next door to Cecil Johnson, a retired man who spends his time landscaping his yard. Mr. Jackson had grown an eight-foot hedge between the two houses. According to Sarah, the hedge blocked her view of the street when she backed out of the driveway, so she asked Mr. Jackson to trim it. After several weeks with no response from Mr. Jackson, Sarah cut down the hedge because she believed it to be a danger to her. Mr. Jackson is furious and wants Sarah to replace the hedge at a cost of $435.

Adversarial Action

Explain to students that they will experience two different methods of resolving disputes: the adversary process of the court, and the mediation process, which takes place in neighborhood justice centers in cities throughout the country.

Divide the class into groups. Explain that the groups will first role play a case using the adversary model. One person in each group should play the plaintiff, a second the defendant, and a third the judge. Explain the court procedure as follows:

1. Judge asks plaintiff to give his side of the story.
2. Defendant then gives his side of the story.
3. Judge can ask questions, during and/or after hearing from the parties.
4. Judge makes a decision and delivers it.

Conduct simulataneous role plays. These should take about 10 minutes. Then with the entire group ask the following questions:

1. Was the role of judge difficult? What did they like or dislike about being a judge?
2. Did the plaintiff and defendant think they were treated fairly. How did they feel about the judge's decision?

Mediation in Action

Explain that students will next mediate the same case. Allow at least 15 minutes for this role play. The judge will become the mediator, and plaintiff and defendant will now be called the disputants. Have the plaintiff and defendant switch roles from the first role play. Explain that the mediator doesn't make a decision in the case. His/her role is to help the disputants reach an agreement. The procedure is as follows:

1. Mediator explains that in mediation the two parties will make their own agreement. They must not interrupt each other. If the need arises, the mediator will talk to each party separately.
2. The mediator asks each disputant to define the problem as he or she sees it and express feelings about it.
3. Each disputant defines the problem and expresses feelings about it.
4. The mediator restates view of both disputants. The mediator asks questions to clarify issues.
5. The mediator asks disputant #1 if he or she has a proposed solution for the problem. The mediator then asks disputant #2 if he or she agrees. If not, the mediator asks disputant #2 for a proposed solution and asks disputant #1 if he/she agrees.
6. If there is an agreement, the mediator restates the agreement to make sure both disputants approve.
7. If no agreement is reached, the mediator talks to each disputant separately, asking each how he or she is willing to solve the problem. Then the mediator brings them together and asks them to offer their solutions. The mediator will repeat step six if an agreement is reached.

Making Comparisons

After the allotted time, bring the class back together and debrief with the following questions.

1. How did being a mediator compare with being a judge? Was it easier or more difficult?
2. Did disputants think they were treated fairly? How did they feel about the process?
3. Was a solution reached? How did it compare to the judge's decision?
4. What are the advantages and disavantages of each method of dispute resolutions? What kinds of conflicts are best suited for each method?

Source: Article by Melinda Smith in Update on Law-Related Education, *Winter, 1986.*

Small Claims Mock Hearings (Secondary)

The Case of the Auto Repair

In this case the plaintiff is an auto repair shop and the defendant is the owner of a car that was repaired in that shop.

The Complaint. The auto repair shop is claiming $250 for repairs, storage, and stop payment fee on a check from the defendant.

The defendant left the car in the morning for an estimate. The defendant phoned the repair shop later and was told that the front end work was necessary and the estimated cost was $125 to $150. Defendant told the repair shop to fix the car. The following day the defendant went to the shop to pick up the car and the bill was $220. Defendant refused to pay. The repair shop would not give up the keys without full payment.

After five days of argument, the defendant picked up the car, paying $220 for repairs plus $6 a day storage fee, which came to a total of $250. The defendant paid by check. The defendant then stopped payment on the check and claimed that the plaintiff was entitled to nothing because of the fraudulent practices.

The Case of Harold and Claire

In this case the plaintiff and defendant are next door neighbors. The plaintiff is the owner of a female Irish setter named Claire. The defendant is the owner of an English pointer named Harold.

Claire's owner is claiming $175 damage to a storm door and front porch caused by Harold, who was trying to reach Claire (Claire was in heat and was kept on the screened-in porch). Claire's owner, the plaintiff, claims to have returned Harold on several previous occasions when Harold wouldn't leave the yard. (Note: The town has a leash law.)

Harold's owner, the defendant, insists that Harold is always tied to a tree in the defendant's yard but that the urge to reach Claire is stronger that the rope.

Source: Excerpted with permission from Julie F. Van Camp's Courts and the Community *(Concord, MA; Project LEAD, 1979).*

State v. Randall (Secondary)

Facts: James and Arlene go to a night club to have a drink. Randall, who has been drinking, comes up to their table and, saying he knows Arlene, tries to talk to her. James gets angry and asks Randall to leave. An argument takes place and a fight ensues. The police are called and Randall is arrested for assault on James. Randall claims James caused the fight and that he was only defending himself.

Evidence: There is no physical or documentary evidence for this trial.

Witnesses

For the Prosecution:

1. James
2. Arlene

For the Defense:

1. Randall
2. Phillip, a waiter in the night club

After each side has had the opportunity to make an opening statement, examine its own witnesses, cross-examine the opponent's witnesses and present a closing statement, the judge should instruct the jury as to the appropriate law in the case.

The instructions which follow can be shortened and/or simplified for classroom use.

Assault and Battery – Defined

"Any intentional and unlawful threat or attempt to commit injury upon the person of another, when coupled with an apparent present ability so to do, and a display of force such as to place the victim in apprehension of immediate bodily harm, is held to constitute an assault. So an assault may be committed without actually touching or striking or doing bodily harm to another.

"Battery is any intentional and unlawful use of force upon the physical person of another. Thus the least touching of the person of another may constitute a battery.

"Unlawful, as used in these instructions, means either contrary to law or without legal justification."

Self-Defense – Defined

"Defendant would be criminally responsible only in the event that the striking of the complainant was unlawful. Not every striking of another person is unlawful. The law recognizes the right of an individual to defend his or her own person. One need not wait to do so at his or her peril (i.e., one need not delay his or her defense until unmistakably and in fact the supposed aggressor has made the first move). The test is reasonableness. A person with a reasonable fear for his or her own safety by reason of the conduct of another may take reasonable steps to defend himself or herself."

Once instructed, the jury should deliberate. They must decide from the evidence whether the prosecution has shown Randall to be guilty of assault beyond a reasonable doubt. The jury may deliberate in a separate room as they would in a actual trial. The jury foreperson writes the verdict on a slip of paper and hands it to the judge who reads it in "open court."

Witness Statements

JAMES: I was just sitting in the place with Arlene, listening to the music, when this guy came up and started bothering her. I asked her if she knew him and she said "No." So I told him to split. The man was blind drunk, and he kept bothering my girl. So I stood up and told him to leave before I called the manager. About that time he squared off on me and when I turned to walk away he hit me.

ARLENE: I was with my boyfriend, James, when an old friend of mine, Randall, came over to our table. Randall had been drinking, and he grabbed my arm and told me to dance with him. James asked me if I knew him, and I said "No," because James is very jealous. Then James told Randall to leave before some trouble got started. Randall didn't leave, and James stood up to argue with him. The next thing I knew, they were fighting.

PHILLIP: This one guy was sitting with a girl when Randall went over to them. I know Randall because he plays in a band here occasionally. Randall only had two drinks. I know because I was waiting on his table. Randall motioned to the girl to dance, and then he held her arm to help her up. The guy she was with got mad and started yelling. Randall smiled and told him to be cool. The guy jumped up and grabbed Randall. Randall hit him back, and they really went to it. After that, the cops came.

Procedure for the Case of Sarah Good

1. Read historical background with the students and briefly discuss the religious atmosphere in the colonies. Explain the purpose of the mock trial.
2. Read through the role profiles (see p. 21) and make role assignments.
3. Review the steps in a trial, going over the purpose and techniques of the opening statement, direct examination, cross-examination, and closing statement.
4. Review the law to be used in the case to ensure student understanding of the issues.
5. Have witnesses write depositions. They should be creative, using and expanding on the background material. Duplicate the witness statements for each attorney. (This can be done as homework.)
6. Have attorneys study the rules of evidence and trial procedure and prepare opening and closing statements and questions to witnesses. (Can be done as homework.)
7. Have judges study trial procedures and prepare jury instructions. (Can be done as homework.)
8. To prevent students acting as jurors from being idle during case preparation (if not assigned as homework), teachers can assign one juror to each witness to help develop the depositions or have jurors do library research on the Salem trials and make reports to the class after the mock trial.
9. Conduct the mock trial.
10. Debrief the trial; the following questions can be used in the debriefing if desired:
    - How well did each person play his/her role?
    - With what crime was the defendant charged?
    - What were the major issues raised in the case?
    - What arguments did the defense present?
    - What arguments did the prosecution present?
    - What facts were not presented?
    - What was the decision? Do you agree or disagree? Was the decision in class the same as the decision in the original case? (Sarah Good was found guilty and was hanged with four other convicted "witches.") Why do you think the decision was different (or the same)?

RANDALL: I was at this club, walking around, checking the place out. I saw Arlene. I had gone out with her for two years, but I hadn't heard from her in a couple of months. I went over to ask her how she was doing. I'd had a couple of drinks, but I wasn't even a little high. I asked her to dance, and the guy with her looked at me funny. I know Arlene well, and I knew she wanted to dance with me, so I took her by the arm. Then this guy sitting with her confronted me. I told him I didn't want any trouble. Then he jumped up and before I knew it, he grabbed me and hit me."

Source: Excerpted with permission from Street Law: A Course in Practical Law, *Second Edition (St Paul: West Publishing Company, 1980).*

An Historical Mock Trial—The Case of Sarah Good (Secondary)

This mock trial, based on the Salem witch trials, is an excellent way to recreate the atmosphere of superstition and religious intolerance that existed during the early colonial period. As a teaching strategy, the mock trial provides an effective means for maximizing student motivation and participation while developing critical thinking skills. This particular activity also gives students the opportunity to explore the motivations for "witch hunts" that have taken place in various periods of American history. For this reason, the activity can be used when studying colonial New England, the Red scares of the 1920s, or McCarthyism in the 1950s. You might have students read Arthur Miller's *The Crucible* in conjunction with this activity to give them a better understanding of the witnesses who must testify in court.

People have believed in witches almost since civilization began. The idea that witchcraft was evil began in the Middle Ages, when the Christian Church held that there was a devil who opposed God in the combat for human souls. A person possessed by the devil supposedly entered into a pact with the devil and tried to destroy God's people. In order to protect God's kingdom on earth, God's people had to find witches, make them confess, and execute them.

History shows that in times of great stress, people and governments have gone on witch hunts as a way of dealing with their troubles. They thought that once the witches were eliminated, the trouble would end, and the world would return to normal. The people of Salem Village, Massachusetts, went on a witch hunt in 1692. They did not do so lightly. The times were such that they felt only drastic measures could save their colony, their village, and their Christian souls. Hindsight indicates that somewhere in the struggle, fear conquered reason, and innocent people were sacrificed.

It is not hard to imagine people of another time and place doing such things. It is harder to accept that some of them were founders of our own country. Perhaps we owe it to the Salem Puritans to find out why they did it.

In 1684, Massachusetts lost its charter and much of the freedom of government it had enjoyed for 50 years. James II sent a royal governor to supervise law-making, taxation, and the courts. Puritans had always elected their own governor. They did not like or trust the royal governor, whose name was Andros. They believed that he was conspiring with the Indians against them. They lived in fear that he would try to change their system of government.

In 1688, the French and Indians attacked frontier settlements and started a war that lasted many years. Each week, Massachusetts Puritans learned of the massacre of friends and neighbors in outlying villages. Every twig that bent in the night aroused fear.

Smallpox epidemics killed hundreds of people in Massachusetts Bay Colony from 1680 to 1691. It was the disease most dreaded among settlers for the suffering it caused and the promise of death. In 1692, an earthquake struck the British colony in Jamaica; 1,700 people were killed. Massachusetts Puritans, while not directly affected, saw this as one more sign of God's displeasure.

Perhaps the Puritans could have accepted all of these disasters, but there was another that struck at the very foundation of their lives in the New World. Their church was being destroyed. It was losing its hold on the children and grandchildren of the founders. Church attendance was falling off. Fewer people were joining the church. Large numbers of people coming into the colony were not Puritans and were not willing to live according to what the Puritans believed. These people were associating with good Puritans and gaining more influence over the political and business life of the colony. To make matters even worse, Puritans had heard rumors that England was planning to establish a state church in the colonies. When they did, the Puritan idea of a state based on a close relationship between church and government would end.

Why had these things happened? Who was responsible? What could the Puritans do to save their beliefs and regain control of their colony?

Puritans were certain that God was angry with them for sins that they had committed, and that He was allowing the devil to do evil things to them. Somehow, they knew they had to drive out the devil and become reunited with God. They held long prayer sessions in which they apologized for their wrongdoings and promised to reform. They kept an eye out for people in their communities whose religious views were drastically different from their own, such as Quakers and Catholics. And, in Salem Village, in the winter of 1692, they discovered and executed witches.

Salem Puritans had suffered all of the misfortunes of the rest of the colony. In addition, several of the young girls of their village had begun to behave strangely. They screamed during church services, cursed their parents, got down on their hands and knees and barked like dogs,

went into trances, and performed such wild contortions that no one knew if they would live from one moment to the next. The doctor, finding no medical reason for their behavior, suggested that the girls were bewitched. While a few villagers thought a good spanking might cure their bewitchment, most felt that God was sending yet another punishment. They were determined to find the witches.

At first, the girls would not say that anyone in particular was bewitching them. However, their families and ministers convinced them that they would be in a lot of trouble if they did not say that someone was bewitching them. They also told the girls that the devil was using a few people in Salem to destroy the whole village. The only way they could be saved was to name who was hurting them.

Finally, the girls accused two women: Sarah Good, a poor, pipe-smoking hag of a woman who went from house to house begging; and Tituba, a West Indian slave who had told the girls stories of demon creatures and voodoo magic.

Sarah Good was regarded as a nuisance by the people of Salem. Her husband, William, did not own land. He supported his family by hiring himself out as a laborer. Whoever hired him usually got his wife Sarah and her children as well. Salem residents did not like to hire William, even though laborers were scarce in the village. Sarah could be shrewish, lazy, and unclean. People did not like to have her in their homes. Lately (in 1692) she had been accused of spreading smallpox by her negligence and unclean habits.

She had taken to begging from door to door, a habit that angered Puritans, who believed in hard work. Many simply turned her away and followed her to make sure that she did not bed down in their haylofts. They were afraid that she might set the place afire with her evil-smelling pipe.

There was a strong feeling among Salem residents that God was punishing Sarah for being lazy and dirty. In the Puritan ethic, God rewarded all who worked hard with success. Sarah's poverty was proof that God had turned away from her. The people did not feel that Sarah's children should be punished for her ways, however, and were kind enough to take them in.

Sarah was a hardened woman. Bad times had made her tough and powerful. When the constable came to arrest her, she fought and cursed like a madwoman. Her lined face and matted gray hair made her look much older than she actually was. One of her children, Dorothy, was only 10 when she was arrested; at the time that the constable came for her, Sarah was carrying another child.

Sarah Good was first brought to trial. Against the better judgment of many Massachusetts ministers and officals, the chief examiners agreed to change regular legal procedures in her case.

At her trial, Sarah denied being a witch. When asked why she did not go to church, she said that she did not have proper clothing to wear to services. In addition to non-attendance at church, Sarah was questioned about a number of other unusual behaviors. She had a habit of muttering to herself as she went begging from door to door. On one of these occasions, some cows had died shortly after her begging and muttering expedition. When asked what she muttered, she replied that she said her commandments. Her questioners then requested that she repeat her commandments in the courtroom. Sarah could not think of them. Instead, she mumbled a garbled and nearly unrecognizable psalm.

Throughout Sarah's testimony, the afflicted girls yelled and screamed. Asked why she hurt the girls, Sarah denied having anything to do with them. She also denied having made a contract with the devil and said that she served only God.

The Law Involved

The class will conduct the trial of Sarah Good, using procedures modified to fit more closely the modern process. A panel of one law judge and two side judges will preside, a jury of 12 citizens and two alternates will hear the case, and prosecution and defense attorneys will question witnesses.

Sarah Good will be tried on the basis of this law:
Death Penalties for Idolatry, Infidelity, Witchcraft, 1671

1. It is enacted by this court and the authority thereof, that if any person having had the knowledge of the true God, openly and manifestly, have or worship any other god but the Lord God, he shall be put to death. (Exod. 22:20, Deut. 13:6, 10).
2. If any person within this jurisdiction, professing the true God, shall wittingly and willingly presume to blaspheme the holy name of God, Father, Son, or Holy God (Ghost), with direct, express, presumptuous or high-handed blasphemy, either by willful or obstinate denying of the true God, or his creation or government of the world; or shall curse God, Father, Son, or Holy Ghost, such person shall be put to death. (Levit. 24:15, 16. . .)
3. If any Christian (so called) be a witch; that is, hath or consulteth with a familiar spirit, he or they shall be put to death.

The devil could take the shape of an innocent person and harm others. A person whose shape was used by the devil was guilty of witchcraft. A wart or other unusual mark could be considered a sign of the devil.

Role Profiles

Witnesses for the Prosecution

SUSANNA SHELDON—young girl, alleged victim of Sarah Good's witchcraft.

ANN PUTNAM—young girl, alleged victim of Sarah Good's witchcraft.

SAMUEL ABBEY—citizen who hired William Good as a laborer.

AGATHA GADGE – Salem citizen at whose door Sarah Good often came to beg.

CONRAD W. STABLE – town constable who arrested Sarah Good.

Witnesses for the Defense

SARAH GOOD – accused witch.

WILLIAM GOOD – Sarah's husband, a laborer who owns no land.

DOROTHY GOOD – Sarah's daughter.

TITUBA – a West Indian slave who allegedly told two young girls stories of voodoo magic.

MATTHEW GOODKIND – citizen of Salem who does not believe in witchcraft and is a supporter of religious tolerance.

Attorneys for the Prosecution

MATHEW BURT – a strong believer, along with much of the population, that God's law and man's law are the same. He is a flamboyant speaker, full of fire and brimstone.

HORATIO NASH – a secular lawyer with a logical mind. He does, however, support the laws of the colonies.

LUCAS PINCKNEY – a young lawyer and devout Christian.

Attorneys for the Defense

FRANKLIN HICKS – a distinguished lawyer, adept at cross-examination.

GEORGE ANDERSON – a flamboyant attorney, well-known for his defense of unpopular and radical causes.

MOSES MUSGRAVE – a young liberal attorney.

Judges

WILLIAM BLACKSTONE – appointed to the bench by the Massachusetts Bay Colony. He is impartial and not prejudiced, but he does believe in the religious laws and customs of the colony. He will conduct the trial proceedings and will give instructions to the jury.

JONATHAN CORWIN – a side judge who was elected by the people of Salem colony. He has no formal law training. He is not at all afraid of witches. He, together with the other side judge, can overrule the presiding judge in rulings and sentencing.

JOHN HAWTHORNE – elected by the people of Salem colony. He has no formal law training. He is deathly afraid of witches and is quite prejudiced against them.

Jurors (12)

Jurors are all freemen of Salem. Their task is to listen to the charges and the evidence and decide on the guilt or innocence of Sarah Good.

Bailiff

He/she opens the court by calling the case, swears in witnesses, keeps order in the court.

Source: Adapted with permission from "The Salem Witch Trials—The Case of Sarah Good," in Legal Issues in American History *(Chicago: Law in American Society Foundation 1969).*

United States Department of Justice Executive Office for Immigration Review in the Matter of Toni Radcliffe (Secondary)

Stipulated Facts

Edward Radcliffe and his eldest child, Toni, arrived in the United States on July 20, 1983. Edward is the town manager of Andreas, a village in the country of Delmar. Edward came to Washington, D.C., to enroll in a two-year educational program at Georgetown University. His trip and tuition were funded by the governments of Delmar and the United States. Upon arrival, Edward and Toni were granted student visas. Remaining in Delmar were Edward's wife, Janet, and younger child, Maria. Edward's brother, Samuel Noble, is a refugee from Delmar who lives in Washington, D.C.

On August 24, 1985, Edward Radcliffe reported that Toni was missing after failing to return home that evening. Unknown to Edward, Toni had run away to the home of his Uncle Samuel. Samuel has lived in the United States since 1980, when he was granted political asylum.

Toni officially applied to the U.S. Immigration and Naturalization Service for political asylum under the Refugee Act of 1980. The asylum application claimed that, if forced to return to Delmar with Edward, Toni would be prevented from receiving higher education, and would likely be persecuted for public statements against the Delmarian government made while in the United States.

On September 16, 1985, the U.S. State Department issued its recommendation against granting political asylum. On September 19, the Washington, D.C. District Director of I.N.S. denied Toni Radcliffe's asylum petition and instituted deportation proceedings. Toni responded by raising the asylum issue in the deportation proceeding. The asylum issue is the only issue to be decided in this case. Edward Radcliffe filed a petition to intervene as a party to this action. The petition has been granted.

Delmar is a country inhabited by two million people. Since its independence in 1968, democracy has come under increasing strains. The occasional elections held have always been subject to widespread fraud by the government in power. The government has issued a series of repressive acts to eliminate dissent.

Beginning in 1983, opponents to the government have undertaken mass demonstrations, bombing, and assassinations. While an increasingly active National Patriotic Front (N.P.F.) party has claimed credit for some of these incidents, their involvement in others has not been established.

Legal Authorities

Sec. 209(a): Refugee Act of 1980

The Attorney General shall establish a procedure for

an alien physically present in the United States. . . to apply for asylum, and the alien may be granted asylum in the discretion of the Attorney General if the Attorney General determines that such alien is a refugee within the meaning of Section 101(a) (42) (9).
Sec. 101(a) (42): Refugee Act of 1980

The term 'refugee' means (A) any person who is outside any country of such person's nationality. . . and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

Statement of Claim

Toni Radcliffe, the petitioner, requests the Immigration and Naturalization Service:

(1) to declare that there is a well founded fear that Toni Radcliffe, if returned to Delmar, would be persecuted on account of political statements made while in the United States; and
(2) to declare Toni Radcliffe a "refugee" within the meaning of the Refugee Act of 1980; and
(3) to grant Toni Radcliffe political asylum.

The respondents, the Immigration and Naturalization Service and Edward Radcliffe, oppose the petition and request the I.N.S.:

(1) to deny the request for asylum by Toni Radcliffe and any other relief sought by the petitioner.

A hearing date has been scheduled before an immigration judge at the Immigration and Naturalization Service on the above claims.

Witnesses

For the Petitioner

1. Toni Radcliffe, petitioner
2. Samuel Noble, uncle of Toni Radcliffe
3. Kim Eller, Executive Director, Global Human Rights*

For the Respondents

1. Edward Radcliffe, father of Toni Radcliffe
2. Chris Wallich, Under Secretary, U.S. Dept. of State*
3. Daniel Lewis, PH.D., Psychologist*

*The parties have stipulated to the expertise of these witnesses in their respective fields of employment.

Affidavit of Toni Radcliffe, Witness for the Petitioner

My name is Toni Radcliffe. I am 16 years old. I am presently living with my uncle, Samuel Noble.

I have decided that I want to stay in the United States and not return to Delmar. I like it very much here in America. When I finish school, I will be able to get a better job in the United States, and live a better life than in Delmar. People are much poorer in Delmar.

Since coming to America, I have become increasingly opposed to the present government in Delmar. I have learned a lot about democracy, and I have seen how it compares to life under the dictator in Delmar. After reading the U.S. Declaration of Independence, I realize that the situation in Delmar is very similar to that of America before the American Revolution. Citizens in Delmar do not have fundamental rights.

While I love my family, I do not wish to return to Delmar. I am willing to give up contact with them for freedom. I am also tired of following my father's strict rules regarding my life. He no longer understands me and why I want to remain in the United States. At the same time, I no longer respect him. He is caught up in his own career and is being manipulated by the Delmarian government.

I am fearful that if I am forced to return to Delmar, the government will take action against me for what I have said in America against the government. My uncle Samuel's son, Oscar, who is 22, has been denied admission to the university. I am sure this is because of his father's political activities.

Since coming to America I feel I have grown up quite a bit. I am old enough to make decisions about my life. I realize that this is an extremely important decision; however, I have no other choice. I want to stay in America and help my country.

Affidavit of Samuel Noble, Witness for the Petitioner

My name is Samuel Noble. I am a professor of political science at University of the District of Columbia. I am Edward Radcliffe's older brother.

In 1980, I applied for and was granted political asylum in the United States. At that time, I was an active member of the National Patriotic Front (N.P.F.) party. In 1979, I was jailed. In 1980, I escaped and fled to the United States. Upon arrival in the United States I changed my last name from Radcliffe to Noble for fear of possible retaliation against me in the United States.

For the present, it makes little sense to speak of rights in Delmar. The reality is that under the National Security Act, every right may be denied if the authorities so choose. Because of my political activities my own son, Oscar, was denied admission to the university. After I fled in 1980, Oscar was held in detention for 30 days and questioned in an abusive manner by the police. He has been harassed repeatedly. That is why I am fearful of Toni returning to Delmar.

Being their only relative in the U.S., I have seen Toni and Edward frequently since they arrived here. Toni attended some of my lectures at the college, and we discussed the future of Delmar. It was during one of these discussions that Toni told me for the first time that he did not want to return to Delmar with Edward.

I tried to convince Edward to allow Toni to stay with me and apply for citizenship in the U.S. Edward refused, and we ended up in a heated argument about Toni and Delmar.

The next thing I know it is August 24 and Toni is

knocking at my door in the middle of the night. He told me he had run away from home and wanted to remain in the U.S. He asked me to help him, and I said I would do whatever I could. I believe that a 16-year-old is old enough to make up his own mind.

The following day, I suggested that a letter be written to the *Washington Post* newspaper and the United States State Department. Toni was still pretty shaken up, so I helped him write the letters requesting asylum.

Toni is very bright and seems to have adapted extremely well to living in the United States. He is doing well in school and has plenty of friends. I am afraid that if Toni returns to Delmar the Delmarian government will take some type of action against Toni if they get the chance.

Kim Eller, Witness for the Petitioner

My name is Kim Eller. I am the executive director of the Global Human Rights Organization. Global Human Rights is an international group which monitors human rights in nations all over the world.

Although we have received fewer reports of abuses in Delmar in the last couple of years, Global Human Rights remains concerned about numerous human rights violations, including arbitrary arrest and torture.

In March, a state of emergency was reimposed. Further, the National Security Act is used to detain people without charge who "advocate political, social or economic change or commit an act which endangers the maintenance of law and order." The penalty can be anywhere from five years to life in prison.

During 1985, dozens of people, including a number of children, died as a result of political violence; among them were people taking part in political demonstrations.

In my opinion, if Toni Radcliffe returned, the Delmarian government would institute some type of reprisal. The National Security Act, for example, has been used often against university staff and students and opposition politicians. While never invoked against a minor, the Act has been used to prosecute many adults who have criticized the government. There is strong evidence that Toni will be prosecuted. On August 26, 1985, when the letter Toni wrote was published in the *Washington Post*, the Delmarian Ambassador issued a press statement saying that statements like Toni's are in violation of the law of his country, and Toni will be subject to possible prosecution upon his return.

Chris Wallich, Witness for the Respondents

My name is Chris Wallich. I am Under Secretary at the State Department's Bureau of Human Rights and Humanitarian Affairs.

In its advisory opinion, the State Department recommends that Toni Radcliffe not be granted political asylum, but rather be returned to Delmar with Mr. Radcliffe.

Delmar is a developing country with serious economic and social problems including a high rate of illiteracy, poverty, malnutrition, and inadequate health care. Freedom of speech, press, religion and assembly are restricted to some degree based on the government's perceived security needs. This is a result of continual terrorist activity by the National Patriotic Front.

Much progress in human rights has occured in recent years as a result of better economic conditions and the stabilization of internal Delmarian affairs. It is also the result of the United States' policy of working behind the scene and not criticizing the Delmarian government excessively in public.

On August 26, Toni was interviewed. On the basis of that interview, it is the department's opinion that this is an internal family matter and not appropriate for governmental action. Toni has had ongoing disagreements with Edward Radcliffe concerning family rules and personal friends. Toni appears to be attracted to the lifestyle in the United States and future economic opportunities.

Toni's opposition to the Delmarian government has only surfaced since the overbearing influence of Samuel Noble, an embittered exile. There is no evidence that Toni adopted these attitudes prior to spending a great deal of time with the uncle. If Toni returns to Delmar with Edward, Toni will see the other side.

Though there have been some political prosecutions in Delmar in recent years, there is no definite evidence that Toni will be persecuted upon return to Delmar. Human rights violations have decreased in recent years, and the State Department has been told by the Delmarian Ambassador that no retaliatory action against Toni is contemplated at this time.

The Department of State believes that Toni is not in danger and the asylum request should be denied. This action will be viewed positively by the government of Delmar and will further our foreign relations with the country and be an important step toward the furtherance of human rights in that country.

Edward Radcliffe, Witness for the Respondents

My name is Edward Radcliffe. I am Toni Radcliffe's father. I am a citizen of Delmar. I was born there and I desire to return with my family. I am not by nature a political man. I am a hard worker who believes that all those who work hard will be rewarded in the end.

Those who advocate violent revolutions, like the National Patriotic Front and my brother Samuel, forget that the result of such violence is further destruction of the country and its people. A better approach is to seek non-violent change in Delmar through the polls.

I do not know what has happened to Toni since we came to the U.S. Toni used to respect me and would never disobey me. Now all Toni wants to do is watch television and go out with American friends. I am afraid that Toni is losing touch with his heritage.

Although Toni had criticized the Delmarian government before, I had never heard anything about advocating its overthrow by violence. Toni used to be a peaceloving child; Toni has now been brainwashed by my brother

Samuel. I am Toni's father, and an internal dispute involving a family from another country should not be interfered with by the courts in the United States.

Toni will not be in danger when we return to Delmar. The ambassador has told me this, and I am a government official on good terms with the national government. Samuel's son, Oscar, was denied admission into the university, but Samuel was a leader of the N.P.F. and Oscar attended N.P.F. rallies. Toni has never taken any action against Delmar at home.

Daniel Lewis, Witness for the Respondents

My name is Daniel Lewis. I am a psychologist in private practice in Washington, D.C.

On September 8, 1985, Edward Radcliffe contacted me regarding his son Toni. He retained my services for $2500. For that sum, I met with Toni Radcliffe, Edward Radcliffe, and Samuel Noble. It is my opinion that it is in the best interest of Toni and the family unit as a whole for Toni to be returned to the care and custody of Edward Radcliffe.

Of primary concern is Toni's welfare and best interest. While Toni's Uncle Samuel expressed an interest in adopting Toni, and has adequate income to support him, Samuel leads a very busy life which requires him to spend a lot of time at the university. In Delmar, Toni would return to a healthy family environment—a father, a mother, and a younger sister. When asked about the family, Toni expressed a deep love for all of them, even Edward, and sadness at perhaps never being able to see them again.

I am worried that Toni is too confused and overwhelmed by what has occured to make an intelligent decision to stay in the United States by himself. Samuel has been extremely influential, perhaps too influential, in Toni's decision to stay in the United States.

It is not unusual for someone Toni's age to rebel against his parents. I believe that is what is occuring in this situation. Toni and Edward have strongly differing views about the government of Delmar which may prevent them from being close ever again. Toni's views are sincere, and he seems to be very knowledgeable about the political situation in that country. Toni believes that he will be persecuted upon his return, and I do not know if he is right about that. I do know that his father has an opposite opinion, and in such a case, we should follow the parent's views and not the child's.

In addition, Toni has been in the United States for two years. It is not unusual for someone to be overwhelmed by such a drastic change in environment. Moreover, Toni has made good friends in the United States, and it is difficult to break these ties.

The relationship between Toni and Edward has been strained since coming to America. Toni has experienced a great deal of freedom in the United States, while at the same time Edward, as Toni's father, has had to establish limits and rules. This has created conflict. I believe that if Toni returns with Edward to Delmar, Toni will be returning to a healthy family situation and should not experience any family hardships.

Adapted with permission by Peter deLacy from a mock trial prepared by the National Center for Citizen Education in the Law

Further Information and Materials About Mock Trials

Center for Civic Education—Law in a Free Society. The Center will provide guidelines for conducting mock trials and moot courts, including sample fact patterns and "intellectual tools" useful in evaluating issues of procedural justice, corrective justice, and responsibility in trials. (Suite 1, 5115 Douglas Fir Drive, Calabasas, CA 91302; 818/340-9320)

Constitutional Rights Foundation. CRF has available the official materials for the California State Mock Trial Competition and three complete cases. The materials include case and role descriptions, relevant legal information, and complete instructions for a mock trial and other classroom exercises. Case topics include *People v. Stevens* (#70010) dealing with a video arcade assault with a deadly weapon; *People v. Ballard* (#70012) dealing with a hit-and-run accident and teenage drinking, driving and responsibility; *People v. Dennis* (#70013) dealing with school vandalism and computer crime. A special edition in commemoration of the Bicentennial of the U.S. Constitution—*People v. Coronel: Shoot-out in the Gold Field*—is also available (601 S. Kingsley Drive, Los Angeles, CA 90005; 213/487-5590)

National Institute for Citizen Education in the Law. NICEL will provide a bibliography of mock trial materials, including general information on mock trials, information for mock trial competitions, sample materials, and a mock trial manual. (25 E Street, N.W., Suite 400, Washington, DC 20001; 202/662-9615. The mock trial manual is available *only* from Social Studies School Service, 10,000 Culver Blvd., Culver City, CA 90230; 213/839-2436.)

Most states and many localities have their own mock trial materials available. Contact your state or local law-related education project. (If you would like a listing of projects in your area, contact the American Bar Association's Special Committee on Youth Education for Citizenship, 750 N. Lake Shore Drive, Chicago, IL; 312/988-5725.)

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